

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

GARY PRIMM,)
)
 Plaintiff,)
)
 v.) No. 1:06-CV-150-FRB
)
 MANAGEMENT CLEANING CONTROL,)
)
 Defendant.)

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Gary Prim to commence this action without payment of the required filing fee. See 28 U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court finds that the applicant is financially unable to pay any portion of the filing fee. Therefore, applicant will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). In addition, the Court has reviewed the instant complaint and will dismiss it prior to service.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis at any time if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis either in law or in fact." Neitzke v.

Williams, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Jackson Sawmill Co. v. United States, 580 F.2d 302, 306 (8th Cir. 1978).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 31-32 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

The Complaint

Plaintiff claims that he was unlawfully discharged from his employment because of his criminal record and because of his manner of dress. Plaintiff claims that his employer, defendant Management Cleaning Control ("Management"), was aware of his criminal record when it hired him. Plaintiff claims that other employees with criminal records have not been fired. Plaintiff seeks injunctive and monetary relief.

Discussion

Liberally construed, the complaint alleges that Management has engaged in an unlawful employment practice, which would necessarily fall under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. Plaintiff's claims, however, are not actionable under Title VII because he has not alleged that Management discriminated against him because of his race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2. As a result, the complaint is legally frivolous or fails to state a claim upon which relief may be granted, or both. See 28 U.S.C. § 1915(e) (2) (B) .

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [#2] is GRANTED.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief may be granted, or both. See 28 U.S.C. § 1915(e) (2) (B) .

An appropriate order of dismissal shall accompany this order and memorandum.

Dated this 7th day of November, 2006.



UNITED STATES DISTRICT JUDGE